

REMARKS

Claims 1-11, 20-22, 24, and 25 are now pending in the Application. No new matter has been added. Entry of the amendments is respectfully requested. Reconsideration is respectfully requested.

Amendments to Drawings/Specification

In the Action the specification was objected to because the Action asserted that the specification did not provide proper antecedent basis for the “multi-layered terry-cloth form” of claim 21. The Applicant respectfully submits that the recitation in Paragraph 24 of, “a small soft semi-firm insert 210, such as a folded washcloth, a foam or other soft molded form, or other similar object adapted to space the ankles slightly, to provide support, and to provide a grip for the caregiver” provides proper antecedent basis for the “multi-layered terry-cloth form.” A folded washcloth, most commonly made of terry-cloth, would be a multi-layered terry-cloth form. An “other similar object” would be a similar form made from terry-cloth which is not a wash cloth. Nonetheless, to clarify the antecedent basis, Applicant has amended the specification to insert the phrase “a multi-layered terry-cloth form into the exemplary list of small soft semi-firm inserts.

No new matter has been added. It is respectfully submitted that this amendment obviates the objection.

Claim Objections

Rejections Pursuant To 35 U.S.C. § 112

In the Action, claim 21 was rejected pursuant to 35 U.S.C. § 112, second paragraph. It was asserted in the Action that claim 21 was indefinite for failing to comply with the written

description requirement in such a way as to convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.”

Applicant respectfully disagrees.

One specific exemplary embodiment of a small semi-firm insert which was listed in Paragraph 24 was “a folded washcloth.” In addition to specific embodiments, the specification also recited “other similar objects adapted to space the ankles slightly, to provide support, and to provide a grip for the caregiver.” It is also noted that the written description includes a claim, as originally filed, in which the multi-layered terry-cloth form is specifically recited. As noted above, a folded washcloth is one specific embodiment of a “multi-layered terry-cloth form.” It would have been readily apparent to one skilled in the art that “similar objects” to a folded washcloth would have included a broader category of forms made from terry-cloth. These would include a form comprising an unfinished piece of terry-cloth fabric (for example) which had been folded or rolled to create multiple layers (for example).

It is respectfully submitted that pending claim 21 is sufficiently definite and that the rejection pursuant to 35 U.S.C. § 112 should be withdrawn.

The Pending Claims Are Not Anticipated or Obvious in View of the Applied Art

Claims 1, 2, 5-7, 9, 11, and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Honer 4,679,263 (“Honer”).

Claims 1, 2, 6, 7, 9, and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Lind 4,609,188 (“Lind”).

Claim 3 and 4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Honer in view of Gershman, a letter from Maurice Gershman, M.D. describing hook and loop tape (“Gershman”), or alternately as being unpatentable over Lind in view of Gershman.

Claim 8 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Honer in view of Torbik 5,708,998 (“Torbik”), or alternately as being unpatentable over Lind in view of Torbik.

Claims 10 and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Honer in view of Gourd 6,859,965 (“Gourd”).

Claims 24 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lind because, although not specifically disclosed, it was asserted that the claimed dimensions could be discovered with only routine skill in the art.

These rejections are respectfully traversed.

Brief Description of the Invention

The present invention is directed to a mobility assistance device. In an exemplary embodiment of the invention, the apparatus includes a mobility device which comprises a thin flexible strip which is adapted to wrap around both ankles permitting both ends of the thin flexible strip meeting and fastening to each other and to a padded area between the ankles.

The Applied References Do Not Disclose or Suggest the Features and Relationships Recited in Applicant’s’ Claims

Anticipation pursuant to 35 U.S.C. § 102 requires that a single prior art reference contain all the elements of the claimed invention arranged in the manner recited in the claim. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

Anticipation under 35 U.S.C. § 102 requires in a single prior art disclosure, each and every element of the claimed invention arranged in a manner such that the reference would literally infringe the claims at issue if made later in time. *Lewmar Marine, Inc. v. Barient, Inc.*, 822 F.2d 744, 747, 3 USPQ2d 1766, 1768 (Fed. Cir. 1987).

Before a claim may be rejected on the basis of obviousness pursuant to 35 U.S.C. § 103, the Patent Office bears the burden of establishing that all the recited features of the claim are known in the prior art. This is known as *prima facie* obviousness. To establish *prima facie* obviousness, it must be shown that all the elements and relationships recited in the claim are known in the prior art. If the Office does not produce a *prima facie* case, then the Applicant is under no obligation to submit evidence of nonobviousness. MPEP § 2142.

The teaching, suggestion, or motivation to combine the features in prior art references must be clearly and particularly identified in such prior art to support a rejection on the basis of obviousness. It is not sufficient to offer a broad range of sources and make conclusory statements. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

Even if all of the features recited in the claim are known in the prior art, it is still not proper to reject a claim on the basis of obviousness unless there is a specific teaching, suggestion, or motivation in the prior art to produce the claimed combination. *Panduit Corp. v. Denison Mfg. Co.*, 810 F.2d 1561, 1568, 1 USPQ2d 1593 (Fed. Cir. 1987). *In re Newell*, 891 F.2d 899, 901, 902, 13 USPQ2d 1248, 1250 (Fed. Cir. 1989).

The evidence of record must teach or suggest the recited features. An assertion of basic knowledge and common sense not based on any evidence in the record lacks substantial evidence support. *In re Zurko*, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001).

It is respectfully submitted that the Action does not meet these burdens.

The Honer Reference

Honer is directed to pillow which attaches to the head of the user. The embodiment of the apparatus asserted to anticipate the Applicant claims is “t-” or “T-” shaped device having pillow-like padding in both arms of the T, and in the central portion of the T- or t-. When in use, the arms and cross point of the “t-” or T-” are used to cushion and support the head, and the stem of the “t-” or T-” wraps over the top of the head, fastening at the forehead with fasteners affixed to the cross-bar.

The Lind Reference

Lind is directed to a device, which holds the ankles in fixed position to permit an individual to perform sit-ups more easily by preventing them from lifting when the individual doing setups raises the upper portion of the body. Only a portion of the device, a single ankle strap, is recited as anticipating the Applicant’s claims.

The Features Recited in Applicant’s’ Claims

Patentably Distinguish Over Honer

In the Action claims 1, 2, 5-7, 9, 11, and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Honer. These rejections are respectfully traversed. Applicant’s response to these rejections is based on the Office’s referenced interpretation of Honer. Thus, any change in the Office’s interpretation of Honer shall constitute a new ground of rejection.

These rejections are respectfully traversed. Applicant traverses these rejections on the grounds that the Honer reference does not contain all the elements of the claimed invention arranged in the manner recited in the claims. The features and relationships recited in Applicant's claims patentably distinguish over the Honer reference.

Claim 1

Claim 1 is an independent claim which is specifically directed to an apparatus. It is respectfully submitted that Honer does not disclose:

- I. "a mobility assistance device"
- II. "a thin flexible strip characterized by a width, a length which is adapted to permit it to be wrapped around two human ankles"

It is respectfully submitted that Honer does not disclose or suggest the specific recited features and relationships as listed above and further discussed herein.

"a mobility assistance device"

The Action is silent as to what constitutes the recited "mobility assistance device" in Honer. Applicant requests that the Office identify why the pillow device of Honer assists mobility.

It is respectfully submitted that Honer does not disclose or suggest a "mobility device" because the device taught by Honer is a pillow which is designed to cushion the head, not assist it in movement. To the extent it either enhances or inhibits movement, it inhibits movement because it holds the head in relative position against whatever it is resting against.

“a thin flexible strip characterized by a width, a length which is adapted to permit it to be wrapped around two human ankles”

The Action alleges that Honer discloses a thin flexible strip characterized by a plurality of layers of fabric, width, a length, and a thickness. The Action is silent as to what constitutes the recited characteristic that the length is adapted to permit it to be wrapped around two human ankles. The Honer device is designed to be wrapped around a head and does not disclose or suggest a strip characterized by having a length adapted to be wrapped around two human ankles.

The Action alleges that Honer discloses a thin flexible strip. Applicant respectfully disagrees. The only portion of Honer which can be described as a strip is the portion which surrounds the head. A “T-” or “t-” shape is not generally considered a strip, nor is that shape consistent with the “rectangular” or “long narrow” shape consistently described and shown by Applicant in her Application (see, e.g., Para 21 and Figures 1, 10). Further, Honer describes the portion of the apparatus which surrounds the head as cushioned. The cushions are required to be relatively thick, sufficiently thick to provide adequate support for the person’s head in all positions. (column 3, lines 23-35), making the strip portion of Honer’s invention relatively thick, rather than relatively thin. To the extent that the stem of the “T-” or “t-” portion is thin, it does not satisfy the remainder of the elements and relationships claimed, for example it does not have a center, wherein the thickness of the center is greater than the thickness of the first and second ends.

As explained, Honer does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required to sustain the objection. Hence, Applicant's claim 1 patentably distinguishes over the Honer reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejection has been overcome. It follows that the claims which depend from claim 1 are likewise allowable.

With respect to Lind It is respectfully submitted that Lind does not disclose the following elements or relationships recited in claim 1, in the manner recited:

- I. "a mobility assistance device"
- "a mobility assistance device"

The Action is silent as to what constitutes the recited "mobility assistance device" in Lind. Applicant requests that the Office identify why the restraining device of Lind assists mobility.

It is respectfully submitted that Lind does not disclose or suggest a "mobility device," because the express purpose of Lind is to "hold the feet and ankle area of the exerciser firmly relative to the board" (e.g. column 1, lines 57-68).

Lind does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required to sustain the objection. Hence, Applicant's claim 1 patentably distinguishes over the Lind reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejection has been overcome. It follows that the claims which depend from claim 1 are likewise allowable.

Claim 20

Claim 20 is an independent claim which is specifically directed to an apparatus. It is respectfully submitted that Honer does not disclose:

- I. “a mobility assistance device”
- II. “a thin flexible strip characterized by a width, a length”
- III “a center, wherein the center includes a pocket formed between two of the plurality of layers of fabric”

- IV. An insert . . . creating a thickness in the center of the strip that is greater than the thickness of the first and second ends.

As discussed above, Honer does not disclose a mobility assistance device, or a thin flexible strip characterized by a width and a length. Further Honer discloses a padded center to the strip which surrounds the head, but does not disclose a pocket formed between two of the layers of fabric, nor does the insert create a thickness within the thin flexible strip that is greater than the thickness of the first and second ends. As can be seen in Fig 1, there are three thickened areas in the strip, with the center thickened area characterized by a thickness which is approximately the same as, or slightly less than, the thickness of the remainder of the strip.

As explained, Honer does not disclose each and every element of the claimed invention arranged in the manner recited in the claims, as is required to sustain the objection. Hence, Applicant's claim 1 patentably distinguishes over the Honer reference. Therefore, it is respectfully submitted that the 35 U.S.C. § 102(b) rejection has been overcome. It follows that the claims which depend from claim 1 are likewise allowable.

With respect to Lind It is respectfully submitted that Lind does not disclose the following elements or relationships recited in claim 1, in the manner recited:

- I. “a mobility assistance device”
- II. “a center, wherein the center includes a pocket formed between two of the plurality of layers of fabric”
- III. An insert . . . creating a thickness in the center of the strip that is greater than the thickness of the first and second ends.

The failure of Lind to teach a mobility assistance device was discussed above. Further, although Lind teaches an open passage between two layers of a single ankle strip, it does not teach a pocket. As is consistent with general use, and the use in the Specification, pockets are generally closed, or have a single opening so that things such as an insert may be held within the opening. (See, e.g., Paragraphs 24 and 29). Similarly, Applicant respectfully suggests that Lind does not teach an insert, but rather a strap which passes through the passage taught by Lind for the purpose of restraining the ankle against a table, rather than assisting in moving ankle.

Claim 2, 6, and 7

Claims 2, 6, and 7 depend from Claim 1, and Applicant respectfully suggest that Claims 2, 6, and 7 are not anticipated by Honer or Lind for the same reasons Claim 1 is not anticipated by Honer or Lind.

Claim 5

Claims 5-7 depend from Claim 1, and Applicant respectfully suggests that claims 5-7 are not anticipated by Honer for the same reasons Claim 1 is not anticipated by Honer.

In addition, because the stem of the “T-” or “t-” does not form part of the thin flexible strip, nothing in Honer teaches a second fastener “affixed to the inner surface of the strip adjacent the center of the strip.”

Claim 9

Claim 9 depends from Claim 1, and Applicant respectfully suggests that Claim 2 is not anticipated by Honer or Lind for the same reasons Claim 1 is not anticipated by Honer or Lind. In addition, for the reasons discussed above with respect to claim 20 in relation to the insert and the pocket, claim 9 is not anticipated by Honer or Lind.

The Pending Claims Are Not Obvious Over Honer in view of Gershman

In the Action claims 3 and 4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Honer and/or Lind in view of Gershman. These rejections are respectfully traversed. Applicant’s response to these rejections is based on the Office’s referenced interpretations of Honer, Lind, and Gershman. Thus, any change in the Office’s interpretation of these references shall constitute a new ground of rejection.

Applicant traverses these rejections on the grounds that Applicant’s’ claims recite features and relationships which are neither disclosed nor suggested in the prior art, and because

there is no teaching, suggestion or motivation cited so as to produce Applicant's' invention. The features recited in Applicant's' claims patentably distinguish over the applied references.

Claim 3 and 4

Claims 3 and 4 depend from Claim 1. The Action has not suggested any additional disclosure or suggestion in Gershman with respect to the elements and relationships previously discussed, Applicant respectfully suggest that Claims 3 and 4 are patentable over Honer or Lind for the same reasons Claim 1 is patentable over Honer and Lind.

Further, the Action suggests that the use of hook and loop fasteners which may be used to replace snaps and hooks and eyes, so that it would be obvious to provide the respective devices with fasteners comprising either hook and loop tape, hooks and eyes, or snaps. Applicant respectfully disagrees. First, the Applicant respectfully suggests that the Action has provided only conclusory statements that it would have been obvious to combine Gershman with either Honer or Lind, as required. In addition, Gershman teaches that hook and loop tape may be used to replace hooks and eyes, but teaches away from the reverse. Specifically, it teaches the replacement of more difficult to manipulate fasteners, such as snaps and hooks and eyes with hook and loop tape because of the ease of manipulation of the latter. Particularly in light of the one direction substitution taught by Gershman, a conclusory statement that it would have been obvious to use the fasteners interchangeably is insufficient. Applicant respectfully suggests that the Action has not met its burden of demonstrating motivation to combine Gershman with either Honer or Lind, and that Claims 3 and 4 are patentable over Honer and/or Lind in view of Gershman.

**The Pending Claims Are Not Obvious Over
Honer in view of Torbik or Lind in view of Curtis**

In the Action claims 8 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Honer in view of Torbik and/or Lind in view of Curtis. These rejections are respectfully traversed. Applicant's response to these rejections is based on the Office's referenced interpretations of Honer, Lind, Curtis, and Torbik. Thus, any change in the Office's interpretation of these references shall constitute a new ground of rejection.

Applicant traverses these rejections on the grounds that Applicant's' claims recite features and relationships which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion or motivation cited so as to produce Applicant's' invention. The features recited in Applicant's' claims patentably distinguish over the applied references.

Claim 8 and 22

Claims 8 and 22 depend from Claim 1 and claim 20, respectively. The Action has not suggested any additional disclosure or suggestion in Torbik with respect to the elements and relationships previously discussed, Applicant therefore respectfully suggest that Claims 3 and 4 are patentable over Honer and Lind for the same reasons Claim 1 and Claim 20 are patentable over Honer and Lind.

Further, the Action suggests that it would have been obvious to use a polyester/cotton blend because Torbik teaches an assistance device which uses a fabric made from polyester cotton blend. First, the Applicant respectfully suggests that the Action has provided only conclusory statements that it would have been obvious to combine Torbik with either Honer or Lind, as required. Torbik is a pillow, not a mobility assistance device, and the Action does not

suggest anything in Torbik or Honer which teaches a motivation to combine Torbik with Honer to create the Applicant's claimed device. As noted in the preliminary statement of the applicable law, conclusory statement that it would have been obvious to one skilled in the art is insufficient.

Applicant respectfully suggests that the Action has not met its burden of demonstrating motivation to combine Torbik with Honer, and that Claims 8 and 22 are patentable over Honer in view of Torbik.

Applicant respectfully suggests that the Action makes similar conclusory allegations regarding the combination of Lind with Curtis, and similarly that conclusory statements regarding the obviousness of combining Lind with Curtis are insufficient to meet the burden of demonstrating motivation to combine, and that Claims 8 and 22 are patentable over Lind in view of Curtis.

The Pending Claims Are Not Obvious Over

Honer in view of Gourd

In the Action claims 10 and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Honer in view of Gourd. These rejections are respectfully traversed. Applicant's response to these rejections is based on the Office's referenced interpretations of Honer and Gourd. Thus, any change in the Office's interpretation of these references shall constitute a new ground of rejection.

Applicant traverses these rejections on the grounds that Applicant's' claims recite features and relationships which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion or motivation cited so as to produce Applicant's' invention. The features recited in Applicant's' claims patentably distinguish over the applied references.

Claim 10 and 21

Claims 10 and 21 depend from Claim 1 and claim 20, respectively. The Action has not suggested any additional disclosure or suggestion in Gourd with respect to the elements and relationships previously discussed, Applicant therefore respectfully suggest that Claims 10 and 21 are patentable over Honer for the same reasons Claim 1 and Claim 20 are patentable over Honer.

Further, the Action suggests that it would have been obvious to use a flexible foam insert as opposed to an insert comprising a folded washcloth or a multi-layered terry-cloth form. The Applicant respectfully suggests that the Action has provided only conclusory statements that it would have been obvious to combine Gourd with Honer or Lind. Gourd does not teach a mobility assistance device, and the Action does not suggest anything in Gourd or Honer which teaches a motivation to combine Gourd with Honer to create the Applicant's claimed mobility assistance device. As noted in the preliminary statement of the applicable law, conclusory

statement that it would have been obvious to one skilled in the art is insufficient. Applicant respectfully suggests that the Action has not met its burden of demonstrating motivation to combine Gourd with Honer, and that Claims 10 and 21 are patentable over Honer in view of Gourd.

The Pending Claims Are Not Obvious Over

Lind

In the Action claims 24 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lind because the claimed dimensions could be discovered without undue experimentation. These rejections are respectfully traversed. Applicant's response to these rejections is based on the Office's referenced interpretations of Lind. Thus, any change in the Office's interpretation of these references shall constitute a new ground of rejection.

Applicant traverses these rejections on the grounds that Applicant's' claims recite features and relationships which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion or motivation cited so as to produce Applicant's' invention. The features recited in Applicant's' claims patentably distinguish over the applied references.

Claim 24 and 25

Claims 24 and 25 depend from Claim 20. The Action has not suggested any additional disclosure or suggestion in Gourd with respect to the elements and relationships previously discussed, Applicant therefore respectfully suggest that Claims 24 and 25 are patentable over Lind for the same reasons Claim 20 is patentable over Lind.

Further, the Action suggests that the dimensions would have been discoverable without undue experimentation. Lind teaches a strap designed to fix ankles in position. Applicant claims

a post surgical mobility assistance. Applicant respectfully suggests that the Action has suggested no motivation to experiment with a device designed to fix ankles in position to modify it by selecting dimensions different for the opposite function, and that Lind teaches away from assisting mobility so that it would destroy Lind to modify it to create the apparatus claimed by the Applicant. Applicant respectfully suggests that the Action has not met its burden of demonstrating motivation to modify Lind to create the claimed apparatus.

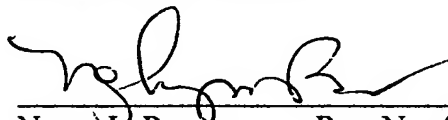
Additional Comments

Conclusion

Each of Applicant's' pending claims specifically recites features and relationships that are neither disclosed nor suggested in any of the applied art. Furthermore, the applied art is devoid of any such teaching, suggestion, or motivation for combining features of the applied art so as to produce Applicant's' invention. Allowance of all of Applicant's' pending claims is therefore respectfully requested.

The undersigned will be happy to discuss any aspect of the Application by telephone at the Examiner's convenience.

Respectfully submitted,



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